

FEB 12 2015

CLERK, U.S. DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**JOSHUA LEE POWELL, 1725364,  
Petitioner,**

v.

**WILLIAM STEPHENS, Director, Texas  
Dept. Of Criminal Justice, Correctional  
Institutions Division,  
Respondent.**

No. 3:12-CV-5174-N

**FINDINGS, CONCLUSIONS AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

This case has been referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636(b) and a standing order of reference from the district court. The Findings, Conclusions and Recommendation of the Magistrate Judge follow:

**I.**

The Fifth Circuit Court of Appeals has remanded this case for a determination of whether Petitioner filed his notice of appeal on or before April 21, 2014.

On March 21, 2014, the district court entered final judgment in this case. Under Federal Rule of Appellate Procedure 4(a)(1)(A), Petitioner had thirty days after entry of the final judgment to file his notice of appeal. Since the thirtieth day fell on a Sunday, Petitioner had until Monday, April 21, 2014 to file his notice of appeal. *See Fed. R. App. P. 26(a)(1)(c).*

On April 30, 2014, the court received Petitioner's notice of appeal. Petitioner dated the notice of appeal as March 27, 2014. A prisoner's filing is considered filed on the date he deposits the filing in the prison's internal mail system. *See Fed. R. App. P. 4(c)(1).*

**Findings, Conclusions and Recommendation  
of the United States Magistrate Judge**

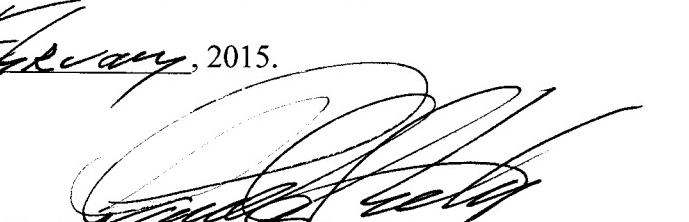
On December 9, 2014, the Court ordered Respondent to file a copy of the prison mail logs for the months of March and April, 2014. The logs show that on March 17, 2014, Petitioner sent a mailing to the district court. On March 19, 2014, the court received Petitioner's objections to the magistrate judge's findings, conclusions and recommendation. On March 21, 2014, the district court entered final judgment. On April 28, 2014, the mail logs show that Petitioner sent mailings to the district court and to Respondent. On April 30, 2014, the court received Petitioner's notice of appeal. Petitioner stated in his notice of appeal that he received a copy of the final judgment on March 28, 2014, although he dated his notice of appeal as March 27, 2014.

The Court finds that Petitioner filed his notice of appeal by depositing it in the prison internal mail system after the April 21, 2014 deadline. Petitioner also did not file a motion for extension of time to file his notice of appeal.

## II.

For the foregoing reasons, the Court recommends that the district court find that Petitioner's notice of appeal was filed after the April 21, 2014 appeal deadline.

Signed this 12 day of February, 2015.



PAUL D. STICKNEY  
UNITED STATES MAGISTRATE JUDGE

**INSTRUCTIONS FOR SERVICE AND**  
**NOTICE OF RIGHT TO OBJECT**

The United States District Clerk shall serve a copy of these findings and recommendations on Petitioner. Pursuant to 28 U.S.C. § 636(b)(1), any party who desires to object to these findings and recommendations must file and serve written objections within fourteen (14) days after being served with a copy. A party filing objections must specifically identify those findings and recommendations to which objections are being made. The District Court need not consider frivolous, conclusory or general objections. The failure to file such written objections to these proposed findings and recommendations shall bar that party from a *de novo* determination by the district court. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985). Additionally, the failure to file written objections to proposed findings and recommendations within fourteen (14) days after being served with a copy shall bar the aggrieved party from appealing the factual findings and legal conclusions of the Magistrate Judge that are accepted by the District Court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996)(en banc).